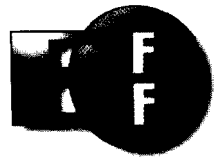


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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of  
Technical Requirements to Enable Blocking  
of Video Programming Based on Program Ratings  
Implementation of Sections 551(c), (d) and  
(e) of the Telecommunications Act of 1996

ET Docket No. 97-206

Dear Commissioners,

The Electronic Frontier Foundation is writing to express our concern with the current Notice of Proposed Rulemaking regarding the implementation of Sections 551(c), (d) and (e) of the Telecommunications Act of 1996. The Electronic Frontier Foundation (EFF) is a privately funded, nonprofit organization concerned with protecting civil liberties and promoting responsible behavior in the electronic world. Our founders include Mitchell Kapor, a leading pioneer in software development who was the first CEO of the Lotus Development Corporation and developed the Lotus 1-2-3 Spreadsheet software; John Perry Barlow, a writer and computer enthusiast who frequently comments on the social implications of Cyberspace communications; and John Gilmore, a cryptography expert and one of the original founders of Sun Microsystems.

EFF is troubled particularly with paragraph 22 of the Proposed Rulemaking, which goes to the regulation of personal computers as television receivers. We are concerned that through this paragraph, the FCC is paving the way for serious regulation of Internet content. Congress did not intend such an outcome when it passed the Telecommunications Act of 1996, and the FCC should avoid expanding its authority to include the Internet. As the Supreme Court noted earlier this year in ACLU v. Reno:

"The Government estimates that '[a]s many as 40 million people use the Internet today, and that figure is expected to grow to 200 million by 1999.' This dynamic, multifaceted category of communication includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real-time dialogue. . . . As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it." (emphasis added)

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[Signature]

### The FCC Proposes to Do More than the Telecommunications Act Requires

The Telecommunications Act of 1996 calls on the television industry to set up a voluntary rating system for television broadcasts and requires all television sets manufactured after February 1998 to include “features designed to enable viewers to block display of all programs with a common rating.” The V-chip scheme, consisting of these voluntary ratings and the hardware to read them, was designed to let parents block TV content for TV shows with movie-like ratings, such as PG-14. When Congress passed the Telecommunications Act, it ordered that “as new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers.”

In its proposed rulemaking, however, the FCC goes beyond the requirement that television sets be built with V-chips. Instead, the FCC states: “[P]ersonal computer systems, which are not traditionally thought of as television receivers, are already being sold with the capability to view television and other video programming. . . . Accordingly, we believe that the program blocking requirements we are proposing should apply to any television receiver meeting the screen size requirements, regardless of whether it is designed to receive video programming that is distributed only through cable television systems, MDS, DBS, or by some other distribution system.”

It is this last phrase, “or by some other distribution system,” that causes EFF the most concern. There is much video that is transmitted over the Internet that is not “broadcast” in the traditional sense of the word. For example, more and more Internet Web sites are including online video-streaming devices and other video multimedia. Would producers of Internet video feeds, particularly as they increase in quality and reach the programming sophistication of traditional television, be required to participate in the V-chip rating and filtering schemes? Applying the V-chip regulations to these new video technologies would be beyond the scope of what Congress mandated in its 1996 enabling legislation.

### Expanding the V-Chip Requirements to the Internet Is Bad Policy and Is Unconstitutional

Not only would a requirement on Internet video producers to self-rate and participate in a V-chip filtering system be beyond the scope of what Congress intended, it would be bad public policy and would be unconstitutional. There has been much debate about filtering and rating systems for the Internet since the Supreme Court held the Communications Decency Act to be unconstitutional last year. EFF is opposed to Internet ratings schemes, in that identifying children online is difficult if not impossible, so current schemes restrict access and block content from the view of adults. Furthermore, current Internet rating and filtering schemes, which are far more developed and sophisticated than the V-chip scheme, are far too subjective and overinclusive.

The Internet is a powerful and positive forum for free expression. It is the place where “any person can become a town crier with a voice that resonates farther than it could from any soapbox,” as the U.S. Supreme Court recently observed in ACLU v. Reno. EFF opposes the adoption of any techniques and standards that could limit the vibrancy and openness of the Internet as a communications medium. Content filtering techniques already have been implemented in ways inconsistent with free speech principles, impeding the ability of Internet users to publish and receive constitutionally protected free expression.

The Clinton Administration has been pushing net content providers to adopt systems similar to V-chips that filter rated sites via Web browsers in the interest of deterring young surfers from viewing adult materials. EFF opposes net rating systems and fears that eventually they will be mandated. The proposed V-chip requirements, if expanded to include personal computers, seem to be moving us closer to that eventuality.

#### With the Convergence of Technologies, Internet Speech Must Not Be Limited to Only What Is Fit for Broadcast

As communications technologies converge, we must be careful not to limit all speech to that which is acceptable on the most restricted medium. The current limitations on broadcast television are based on the 1950s model of TV. Yet these limitations have been expanded to include cable television and then DBS satellites. Ironically, as the sophistication of our technologies for communication expand, our First Amendment rights contract. As Washington, DC, attorney Bob Corn-Revere has commented, “It’s a difficulty that historically has arisen with technological convergence.”

But the Supreme Court specifically held that the broadcast limitations on free speech rights are not to be expanded to the Internet. “Neither before nor after the enactment of the CDA have the vast democratic fora of the Internet been subject to the type of government supervision and regulation that has attended the broadcast industry. Moreover, the Internet is not as ‘invasive’ as radio or television.” The Supreme Court noted that Internet content should be treated like written speech, making any rating-and-blocking scheme suspect.

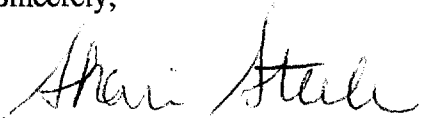
#### V-Chip Requirements Themselves Are Too Vague to Be Useful for Internet Rating

Our comments have focused on the problems with expanding the V-chip rating scheme to Internet communications. While we believe it to be beyond the scope of our most pressing concern, we feel it is worth mentioning that there are additional problems with the V-chip rating scheme itself that pose difficulties to potential users. For example, the definitions of violent or offensive programming are not specific enough to be particularly useful in rating Internet broadcasts.

For these reasons, the Electronic Frontier Foundation respectfully asks that the FCC change paragraph 22 of its proposed rulemaking to eliminate all ambiguities and formally state its intentions to avoid requiring V-chips for computers or Internet communications. Computers are not television sets, even if they can display video. Computers hooked into the Internet are not TV-watching apparatuses, and video on the Internet is not broadcast television. The Internet and broadcast television should not be thrown into the same category when it comes to the V-chip and ratings.

Thank you in advance for your consideration of our concerns. We would be pleased to provide the FCC with any further information that may be needed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shari Steele".

Shari Steele  
Staff Attorney